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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI
O.S.A. Nos.80, 125, 127, 131, 132, 133
135, 136/2007 AND O.S.A.No.344/2006

O.S.A.No.80/2007:

M/s.7th Channel Communications,
by its Proprietor,
Manicam Narayanan
121, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4. : Appellant/Plaintiff

Vs.

1.M/s.Roja Combines,
rep. By its Proprietor
M.Kaja Mydeen,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai-83.

2.M/s.Sri Venkateswara Cine Enterprises
rep. By its Proprietor D.Raj Varma,
1307, Ground Floor,
No.65, Jubilee Hills, Hyderabad.

3.M/s.Sathiyaram Murthy Finance
39/6, thanikachalam Road,
T.Nagar, Chennai 17.

4.M/s.S.S.Communications,
Plot No.8-2-469,
road No.5, Banjara Hills,
Hyderabad 500 034.

5.M.V.R.S.Prasad

6.M/s.Prasad Film Laboratories
No.58, Arunachalam Road,
Chennai-93. : Respondents/Defendants

Appeal filed against the fair and decreetal Order dated 3.4.2007 passed by this Court in O.A.No.185/2006 in C.S.No.168/2006 on the file of the Original Side of this Court.

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For appellant : Mr.Sai Bharath
For respondents : Mr.Rugan and Arya for R-1
Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.K.P.Sanjeev Kumar for R-4
Mr.Sarguna Raj for R-6
Mr.Haribabu, for R-2
Mr.P.L.Narayanan for R-3 & R-5

O.S.A.No.125/2007

C.Venkataraju,
Proprietor,
Gita Chitra International
No.1/7, Masilamani Street,
T.Nagar, Chennai - 17. : Appellant/Plaintiff

Vs.

1.Kaja Mydeen, Proprietor,
M/s.Roja Combines,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai 83.

2.D.Raj Varma, Proprietor,
M/s.Sri Venkateswara Cine Enterprises,
1307, Ground Floor,
No.65, Jubilee Hills, Hyderabad.

3.Manicam Narayanan, Proprietor,
M/s.7th Channel Communications,
No.121, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

4.M/s.S.S.Communications,
Plot No.8-2-469,
No.5, Banjara Hills,
Hyderabad, 500 034

5.M/s.Prasad Film Laboratories,
No.58, Arunachalam Raod,
Chennai 93. : Defendants/Respondent

Appeal filed against the order dated 03.04.2007 passed by this Court in O.A.No.765/2006 in C.S.No.741/2006.

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For Appellant : Mr.PL.Narayanan
For respondents : Mr.Sai Krishnan for R-3
Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.K.P.Sanjeev Kumar for R-4
Mr.Sarguna Raj for R-5

O.S.A.No.127/2007

Manicam Narayanan, Proprietor,
M/s.7th Channel Communications,
No.121, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4. : Appellant/3rd defendant

Vs.

1.C.Venkataraju,
Proprietor,
Gita Chitra International
No.1/7, Masilamani Street,
T.Nagar, Chennai - 17.

2.Kaja Mydeen, Proprietor,
M/s.Roja Combines,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai 83.

3.D.Raj Varma, Proprietor,
M/s.Sri Venkateswara Cine Enterprises,
1307, Ground Floor,
No.65, Jubilee Hills, Hyderabad.

4.M/s.S.S.Communications,
Plot No.8-2-469,
No.5, Banjara Hills,
Hyderabad, 500 034

5.M/s.Prasad Film Laboratories,
No.58, Arunachalam Raod,
Chennai 93.

6.A.P.Film Chambers of Commerce
Dr.D.Rama Naidu,
Building Complex,
Film Nagar,
Jubilee Hills
Hyderabad - 500 033 : Defendants/Plaintiff
6th respondent/Garnishee &
defendants 1,2,4 & 5 & third party

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Appeal filed against the order dated 03.04.2007 passed by this Court in O.A.No.4060/2006 in C.S.No.741/2006.

For Appellant : Mr.Sai Krishnan
For respondents : Mr.PL.Narayanan for R-1
Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.K.P.Sanjeev Kumar for R-4
Mr.Sarguna Raj for R-5

O.S.A.No.131/2007

M/s.Ramakrishnan, Proprietor,
M/s.S.S.Communications,
Plot No.8-2-469,
No.5, Banjara Hills,
Hyderabad, 500 034 : Appellant/Plaintiff

Vs.

1.Manicam Narayanan, Proprietor,
M/s.7th Channel Communications,
No.121, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

2.Kaja Mydeen, Proprietor,
M/s.Roja Combines,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai 83.

3.Raaj Varma, Proprietor,
M/s.Sri Venkateswara Cine Enterprises,
1307, Ground Floor,
No.65, Jubilee Hills, Hyderabad.

4.M/s.Prasad Film Laboratories,
No.58, Arunachalam Raod,
Chennai 93. : Respondents/Defendants

Appeal filed against the order dated 03.04.2007 passed by this Court in O.A.No.707/2006 in C.S.No.683/2006.

For Appellant : Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.K.P.Sanjeev Kumar

For respondent : Mr.Sai Krishnan for R-1
Mr.Sarguna Raj for R-4

O.S.A.No.132/2007

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M.V.R.S.Prasad
11-A, Thiagarayar Road,
T.Nagar, Chennai 17. : Appellant/Plaintiff

Vs.

1.Kaja Mydeen, Proprietor,
M/s.Roja Combines,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai 83.

2.D.Raj Varma, Proprietor,
M/s.Sri Venkateswara Cine Enterprises,
1351, Ground Floor,
No.65, Jubilee Hills, Hyderabad.

3.Manicam Narayanan, Proprietor,
M/s.7th Channel Communications,
No.121, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

4.Prasad Film Laboratories,
No.58, Arunachalam Raod,
Chennai 93.

5.S.S.Communications,
Plot No.8-2-469,
No.5, Banjara Hills,
Hyderabad, 500 034 : Respondents/Defendants

Appeal filed against the order dated 03.04.2007 passed by this Court in O.A.No.721/2006 in C.S.No.691/2006.

For Appellant : Mr.PL.Narayanan
For Respondent : Mr.Sai Krishnan for R-3
Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.K.P.Sanjeev Kumar for R-5

Mr.Sarguna Raj for R-4

O.S.A.No.133/2007

M.V.R.S.Prasad
11-A, Thiagarayar Road,
T.Nagar, Chennai 17. : Appellant/5h defendant

Vs.

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1.M/s.7th Channel Communications,
rep. By its Proprietor,
Mr.Manicam Narayanan,
No.121, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.
2.M/s.Roja Combines,
rep. By its Proprietor,
Mr.M.Kaja Mydeen,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai 83.

3.M/s.Sri Venkateswara Cine Enterprises,
rep. By its Proprietor,
Mr.D.Raj Varma,
1307, Ground Floor,
No.65, Jubilee Hills, Hyderabad.

4.Sathiyaram Murthy Finance,
36/6, Thanikachalam Road,
T.Nagar, Chennai 17.

5.M/s.S.S.Communications,
Plot No.8-2-469,
No.5, Banjara Hills,
Hyderabad, 500 034.

6.Prasad Film Laboratories,
No.58, Arunachalam Raod,
Chennai 93. : Respondents/Plaintiff/
Defendants

Appeal filed against the order dated 03.04.2007 passed by this Court in O.A.No.186/2006 in C.S.No.168/2006.

For Appellant : Mr.PL.Narayanan
For respondents : Mr.Sai Krishnan for R-1
Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.K.P.Sanjeev Kumar for R-5
Mr.Sarguna Raj for R-6

O.S.A.No.135/2007

M/s.S.S.Communications,
Plot No.8-2-469,
No.5, Banjara Hills,
Hyderabad, 500 034. : Appellant/3rd defendant

Vs.

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1.M/s.7th Channel Communications,
rep. By its Proprietor,
Mr.Manicam Narayanan,
No.121, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

2.M/s.Roja Combines,
rep. By its Proprietor,
Mr.M.Kaja Mydeen,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai 83.

3.M/s.Sri Venkateswara Cine Enterprises,
rep. By its Proprietor,
Mr.D.Raj Varma,
1307, Ground Floor,
No.65, Jubilee Hills, Hyderabad.

4.M/s.Sathiyaram Murthy Finance,
36/6, Thanikachalam Road,
T.Nagar, Chennai 17.

5.Mr. V.R.S. Prasad,
Plot No.8-2-469
Road No.5, Banjara Hills
Hyderabad 500 034.

6.Prasad Film Laboratories,
No.58, Arunachalam Raod,
Chennai 93. : Respondents/Plaintiff Defendants 1,2,4, 5 & 6

Appeal filed against the order dated 03.04.2007 passed by this Court in O.A.No.186/2006 in CS.No.168/2006.

For Appellant : Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.K.P.Sanjeev Kumar

For respondents : Mr.Sai Krishnan for R-1
Mr.PL.Narayanan for R-5
Mr.Sarguna Raj for R-6

O.S.A.No.136/2007

M/s.Ramakrishnan, Proprietor,
M/s.S.S.Communications,
Plot No.8-2-469,
No.5, Banjara Hills,
Hyderabad, 500 034 : Appellant/plaintiff

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Vs.

1.Manicam Narayanan, Proprietor,
M/s.7th Channel Communications,
No.121, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

2.Kaja Mydeen, Proprietor,
M/s.Roja Combines,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai 83.

3.Raaj Varma, Proprietor,
M/s.Sri Venkateswara Cine Enterprises,
1307, Ground Floor,
No.65, Jubilee Hills, Hyderabad.

4.M/s.Prasad Film Laboratories,
No.58, Arunachalam Raod,
Chennai 93. : Defendants

Appeal filed against the order dated 03.04.2007 passed by this Court in O.A.No.708/2006 in C.S.No.683/2006.

For Appellant : Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.K.P.Sanjeev Kumar

For respondents : Mr.Sai Krishnan for R-1
Mr.Sarguna Raj for R-4

O.S.A.No.344/2006

M/s.7th Channel Communications,
rep. By its Proprietor,
Mr.Manicam Narayanan,
No.121, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4. Appellant/Plaintiff

Vs.

1.M/s.S.S.Communications,
Plot No.8-2-469,
No.5, Banjara Hills,
Hyderabad, 500 034.

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2.M/s.Roja Combines,
rep. By its Proprietor,
Mr.M.Kaja Mydeen,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai 83.

3.M/s.Sri Venkateswara Cine Enterprises,
rep. By its Proprietor,
Mr.D.Raj Varma,
1307, Ground Floor,
No.65, Jubilee Hills, Hyderabad.

4.M/s.Sathiyaram Murthy Finance,
36/6, Thanikachalam Road,
T.Nagar, Chennai 17.

5.M.V.R.S.Prasad
11-A, Thiagarayar Road,
T.Nagar, Chennai 17.

6.M/s.Prasad Film Laboratories,
No.58, Arunachalam Raod,
Chennai 93. : Respondents/ Defendants

Appeal filed against the order dated 23.06.2006 passed by this Court in A.No.3149/2006 in O.A.No.186/2006 in C.S.No.168/2006.

For Appellant : Mr.Sai Krishnan

For respondents : Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.K.P.Sanjeev Kumar for R-1
M/s.Rugan and Arya for R-2
Mr.PL.Narayanan for R3 & R5

J U D G M E N T

R.BANUMATHI, J.

Telugu Version rights of Tamil Version "Vettaiyadu Vilayadu" is the subject matter of these appeals arising out of common order of the learned Single Judge dated 03.04.2007.

2.Entanglement in litigation by persons who claim to have advanced monies to the first Defendant - M/s.Roja Combines led to the filing of four suits. The Interlocutory Applications were

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disposed of by the learned Single Judge by a common order. All the appeals arise out of common order and since common points arise for consideration, all the Appeals were heard together and disposed of by this common Judgment. For convenience, parties are referred in their original rank in C.S.No.168/2006, which is a comprehensive suit.

3.Brief facts in a nutshell are as follows :-

The first Defendant - M/s.Roja Combines is the Producer and absolute owner of Tamil Colour Film titled "Vettaiyadu Vilayadu" [hereinafter referred as 'suit film'] starring Kamalhassan and others, directed by Goutham and music by Harris Jeyaraj. The first Defendant appears to have taken finance from all available resources. As the first Defendant was facing financial constraints, the entire production negative rights and sole marketing rights of suit film was transferred in favour of 7th Channel Communications, plaintiff herein, without any restriction or exception of any areas, for a mutually agreed sum of Rs.14,00,000/- and that transfer was by a letter of arrangement dated 24.10.2005. As a consideration for transfer of negative rights, plaintiff has paid a huge sum as indicated in the said Agreement dated 24.10.2005. Plaintiff became Negative Rights Holder and sole possession of marketing rights of the suit film without any encumbrance or restriction.

4.The present dispute relates to Telugu Version of the film "Vettaiyadu Vilayadu". The first Defendant originally assigned the Telugu Version of the suit film in favour of the second Defendant - Proprietor of M/s. Sri Venkateswara Cine Enterprises [for short, SVCE] under an Agreement dated 05.05.2005. In the letter of arrangement between plaintiff and the first Defendant dated 24.10.2005, Telugu Version of the suit film was also transferred to the plaintiff. The first Defendant has assured to take up the responsibility of marketing the Telugu rights for a sum of Rs.2,25,00,000/- onbehalf of the plaintiff Channel. The Agreement in favour of D-2 – SVCE was cancelled by a subsequent Agreement dated 24.11.2005 with the payment of a sum of Rs.29,00,000/- to the second Defendant. Copy rights of Telugu Version of suit film was assigned to the plaintiff for a total sale consideration of Rs.2,30,00,000/- by a separate Agreement dated 17.12.2005.

5.Case of the plaintiff is that the first Defendant assigned the right of the Telugu Version of suit film in favour of the plaintiff under an Agreement dated 17.12.2005 for a total consideration of Rs.2,30,00,000/- and therefore, the plaintiff is the absolute Copyright Holder of Telugu Version of the suit film. Plaintiff is said to have arranged for a payment of Rs.29,00,000/- payable by the first Defendant to the second Defendant for cancellation of the prior Agreement. Through 6th Defendant Laboratory, plaintiff has learnt that Defendants 3 to 5 also claim

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the said Copyright. Asserting Telugu Version rights and alleging that Defendants are laying claim over the suit film, plaintiff has filed suit for Permanent Injunction for declaration that he is the sole and absolute owner of the copyright pertaining to the Telugu Version of the suit film and also for mandatory injunction to direct 6th Defendant Laboratory to deliver prints of Telugu Version to the plaintiff. Plaintiff has also filed applications for Temporary Injunction directing the 6th Defendant Laboratory to deliver the prints of Telugu Version of suit film and to restrain the Defendants from interfering with copyright of the Telugu Version.

6.The Film Producer - first Defendant did not enter appearance. All other Defendants have hotly contested the matter.

7.Upon consideration of the rival contentions and materials on record, the learned Single Judge has held that the plaintiff has established his bonafides in entering an Agreement on 17.12.2005 with the producer - the first Defendant and that the rights of the plaintiff has to be protected and on those findings, granted temporary injunction, allowing O.A.No.186/2006. However, observing that "there are other persons who claim to have advanced monies to the producer and got the copyrights assigned in their favour", the learned Single Judge declined interim mandatory injunction and dismissed application O.A.No.185/ 2006. As against dismissal of mandatory injunction, plaintiff has filed O.S.A.No.80/2007. As against grant of Interim Injunction in O.A.No.186/2006, D-4 and D-5 have filed O.S.A.No.135/2007 and O.S.A.No.133/2007.

8.Case of the second Defendant [SVCE] in nutshell as apparent from counter filed for the first time in appeal, is as follows :-

The first Defendant had entered into an Agreement with him on 05.05.2005, assigning all Telugu Dubbing Rights/ remaking rights with absolute rights over Telugu Version of the said movie for exhibition and distribution all over the world, excepting Tamil Nadu and Kerala States, for a valuable consideration of Rs.2,00,00,000/-, out of which, the second Defendant paid an advance to the first Defendant an amount of Rs.20,00,000/- at the time of signing the Agreement. Further case of the second Defendant is that it was accepted that he would directly pay the amount of Rs.1,00,00,000/- to M/s.Sathiya Rengiah [father of D-5] and to Director – Goutham Menon, an amount of Rs.80,000/- on behalf of the first Defendant. After assigning the Telugu Version rights to D-2, the first Defendant did not have any further rights and D-2 had become absolute owner of the Telugu version of the suit film. Even as per the Cancellation Agreement, D-1 ought to have paid an amount of Rs.29,00,000/- and further amount of Rs.5,00,000/-. D-2 ought to have organized a meeting on 29.11.2005 between D-1 and D-4, to whom he had sold away Overseas, Satellite,

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Video, Cable and Television Rights. D-2 organised a meeting with D-4 but D-1 was unable to buy back rights Satellite and overseas rights over the Telugu Version of the said movie that was sold to D-4 under a valid Agreement. D-1 was also unable to obtain and hand over letters of confirmation from D-6, releasing D-2 from all liabilities on account of the said movie. Owing to the above two factors, Cancellation Agreement dated 24.11.2005 could not have been given effect to and is deemed to be cancelled. D-2 has incurred huge expenditure on account of Telugu Version of the said movie and as against the second Defendant, plaintiff is not entitled to any relief.

9.The second Defendant had not filed counter statement in the trial Court. Pointing out that though D-2 has signed Cancellation Agreement, D-2 has not only turned volte face against the Cancellation Agreement but had also created documents in favour of plaintiff in C.S.No.741/2006, the learned Single Judge has held that the validity of the Cancellation Agreement dated 24.11.2005 vis-a-vis the other documents could be gone into only at the time of trial when the parties adduce evidence.

10. Case of D-4 – S.S. Communications [plaintiff in C.S.No.683/ 2006] :-

According to D-4, he has entered into an Agreement with D-2 - SVCE on 09.05.2007 wherein D-2 has transferred the Telugu Version of the film's Satellite, Video, Cable, Doordarshan, DTH, Internet, VCD, DVD and electronic media rights [for brevity, referred as Satellite rights] in respect of Telugu Cinema "Mahadheera" [Tamil Version of "Vettayadu Vilayadu"]. As per clause 5 of the said Agreement, D-4 will have rights for a period of thirty years on the satellite rights and D-4 has agreed to pay a sum of Rs.22,50,000/-. Out of the consideration, D-4 has paid a sum of Rs.12,57,000/- for the said film "Mahadeera". D-4 has also entered into an Overseas Agreement with D-2 for the said film "Mahadeera" by Agreement dated 23.12.2005, wherein D-2 has transferred the overseas rights to D-4 and the same is subsisting. Without the knowledge of D-4, D-2 had entered into Cancellation Agreement with the plaintiff and the same is binding on D-4.

11.Further case of D-4 is that it has spent huge amount in advertising and promotion of Telugu Version of the film. The appellant is still the exclusive owner of the satellite rights and overseas rights of suit film and D-4 prays for Temporary Injunction restraining the plaintiff from alienating the satellite rights and overseas rights. According to D-4, plaintiff knew fully well that there was an existing assignment for the Telugu Version and therefore, the question of 7th Channel having any rights over the Telugu Version cannot be permitted.

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12. Impugned findings in respect of D-4's claim:-

The learned Single Judge held that D-4 is only an agreement holder from the original assignee – SVCE and therefore D-4 has to rise or fall only on the strength of the Original Agreement dated 05.05.2005 between the Producer and D-2. The learned Judge has further observed that Agreement dated 09.05.2005 does not contain a clause fixing consideration for the Agreement and the said Agreement without consideration is void. In so far as the Agreement dated 23.12.2005 relating to overseas rights, the learned Judge has held that it is subsequent in point of time to the Cancellation Agreement dated 24.11.2005 and hence doubted its validity. On those findings, the learned Single Judge dismissed the applications O.A.Nos.707/2006 and 708/2006, which are challenged in O.S.A.Nos.131/2007 and 136/2007.

13. Case of D-5/plaintiff in C.S.No.691 of 2006 is as follows :-

D-5 claims to have originally entered into an Agreement dated 28.04.2004 with D-1 for lease-hold right of Tamil feature film starring Kamalhassan directed by Goutham Menon on outright basis for the entire areas of North Arcot, South Arcot and Chengalpat, popularly known in the film industry as "N.S.C. Area" for a consideration of Rs.60,00,000/-, within a month of the aforesaid Agreement. Another Agreement dated 18.05.2004 is said to have been entered into between D-5 and D-1, assigning dubbing and re-making of Tamil feature film titled "SIPPAI", starring Kamalhassan and others, directed by Goutham Menon and music scored by Harris Jeyaraj for a consideration of Rs.20,00,000/-.

14.Further case of D-5 is that D-2 on learning from plaintiff that Telugu Dubbed Version of the film stands assigned to D-5, D-2 had approached for negotiation for relinquishing the assignment made in favour of D-5 upon receipt of Rs.One crore. D-2 has stated that he has to fund the producer to the tune of Rs.1.25 crores for completing the production and that in respect of Rs.One crore payable to D-5, he would do so at the time of release of the said film in Telugu. The first defendant had issued a letter on 06.05.2005 regarding the Agreement to pay Rs.One Crore through D-2 directly to D-5 prior to the release of the film. By letter dated 06.10.2005, D-2 had confirmed the existence of the Contingent Contract i.e. assignment of suit film continuing in the name of D-5 until payment of Rs.One crore. Acting upon the said letter dated 06.10.2005, the sixth defendant lab had issued Lab Confirmation Letter dated 07.11.2005. The said lab letter is in favour of D-5 and one Sathyarama Murthy [who is not a party to any of the proceeding]. According to D-5, copyright of the suit film continues to vest in D-5. The Cancellation Agreement between D-1 and D-2 would not affect D-5's copyright in Telugu Version of the

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suit film. Further case of D-5 is that the lab letter is in favour of D-5 and is still operative and the lab cannot release prints to the plaintiff until the due amount is paid to D-5.

15.D-5 filed C.S.No.691/2006 for declaration that he is the absolute copyright owner of the Telugu Version of the suit film and also for Permanent Injunction.

16. Impugned findings in respect of D-5's claim :-

Insofar as D-5's claim is concerned, the learned Single Judge has held that though both the Agreements indicate payment of consideration of Rs.60,00,000/- and Rs.20,00,000/- respectively, consideration appears to be on adjustment towards the amount payable by the producer in respect of the earlier production titled "JANA" and the pleadings in the plaint run contrary to the recitals contained in both Agreements. Insofar as the lab letter produced by D-5 is concerned, the learned Single Judge held that the lab letter is not in response to the letter from D-1 but is only in response to the letter of the first Assignee – D-2. It was further held that validity of the claim of D-5 on the basis of lab letter dated 17.11.2005 has to be tested in the light of other lab letter dated 07.01.2006 filed by D-4 in C.S.No.683/2006 and on those findings, the learned Single Judge dismissed the application O.A.No.721/2006, which is challenged in O.S.A.No.132/2007.

17. Case of Gita Chitra International [GCI] - Plaintiff in C.S.No.741/2006 :-

Case of GCI is based upon payment of Rs.15,00,000/- allegedly made by him to D-2 - SVCE. Suit C.S.No.741/2006 was filed for recovery of the suit amount of Rs.15,00,000/- along with interest totalling to Rs.20,10,000/-. In O.A.No. 765/2006, GCI prayed for injunction restraining the respondents from dealing with copyrights of Telugu Version version of the film. In A.No.4060/2006, GCI prayed for restraining the Garnishee viz., Andhra Pradesh Film Chamber of Commerce from releasing or parting with an amount of Rs.29,00,000/- deposited with them.

18. Findings in respect of GCI's Claim :-

Observing that GCI's claim is only a money claim, O.A.No.765/2006 was dismissed. A.No.4060/2006 was disposed of with direction to the Garnishee - Andhra Pradesh Film Chamber of Commerce to deposit an amount of Rs.29,00,000/- in any one of the Nationalized Bank for a period of three years. Aggrieved against such direction in A.No.4060/2006, GCI has filed O.S.A.No.125/2007.

19. Contentions of parties :-

The learned Counsel for the plaintiff has mainly contended that when the learned Single Judge has held that the plaintiff has proved the prima facie case, the Court ought to have granted mandatory injunction since the plaintiff has advanced huge amount towards Telugu Version. The learned Counsel for the plaintiff has

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further argued that when the second Defendant has consciously entered into the Cancellation Agreement, suppressing the same, the second Defendant has moved Andhra Pradesh Film Chamber of Commerce, which was not taken note of by the learned Single Judge. It was further submitted that Defendants are wantonly blocking the release of the film by making false claims over the copyrights on the strength of certain make-believe documents. It was urged that if the film is not released and if kept idle, the film would loose its marketing potential and the plaintiff would be subjected to irreparable loss and hardship.

20.In the trial court though the 2nd defendant has not explained his stand, in this appeal, the 2nd defendant has filed his counter affidavit and contested the appeals. The second Defendant though he has not filed counter affidavit in the trial Court, has filed counter affidavit and contested the appeals. The contention of the second Defendant is that he has incurred huge expenditure onbehalf of the Telugu Version of the suit film and that the Cancellation Agreement dated 24.11.2005 could not have been given effect to. Further contention of D-2 is that he was incurring huge expenditure on account of the Telugu Version and as per the Agreement between D-1 and D-2, both Tamil Version, under the title "Vettayadu Vilayadu" and Telugu Version, under the Title "Mahadheera", are to be released simultaneously around the first week of April 2006. It is the further case of D-2 that he has spent huge sums on the project to the tune of about Rs.59,00,000/-. The second Defendant has alleged collusion between plaintiff and the first Defendant.

21.Mr.AR.L.Sundaresan, learned Senior Counsel has submitted that the second Defendant has assigned the Satellite, Video, Cable and Doordarshan and other T.V. and Electronic Media and overseas rights in respect of the Telugu Version "Mahadeera", which was acted upon on the strength of the Agreement dated 05.05.2005 and 23.12.2005 and that the fourth Defendant is the exclusive owner of the said rights and is also entitled to exploit the same. The learned Senior Counsel further urged that D-4 is still the exclusive owner of the satellite rights of the Telugu Version and he has already spent huge amount on advertising and on promotion of Telugu Version of the film.

22.Drawing our attention to various correspondence, the learned Counsel for the 5th Defendant, Mr.P.L.Narayanan, has submitted that the second Defendant, who is the Telugu Producer had issued letter in favour of the 5th Defendant confirming the payment of Rs.1,00,00,000/- at the time of release of Telugu Version of the suit film. The learned Counsel further submitted that relinquishment of the copyright of Telugu Dubbed Version of the suit film will take into effect only upon payment of consideration of Rs.1,00,00,000/- to the 5th respondent and till

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such time, copyright of the suit film continues to be with the 5th Defendant. It was further urged that to overcome this difficulty, the producer - 1st Defendant had colluded with the plaintiff in filing the suit C.S.No.168/2006. The learned counsel further urged that the plaintiff cannot by-pass the pre-existing commitments of D-1 since the plaintiff has only stepped into the shoes of D-1. It was further urged that D-2 has entered into a Contingent Contract on 05.05.2005 subject to the payment of Rs.One crore to D-5 and the plaintiff is bound to honour that commitment to D-5. Placing much reliance upon the Lab Letter, it was submitted that the Lab Letter dated 17.11.2005 would go a long way in strengthening D-5's case.

23.We have given thoughtful consideration to the rival contentions and carefully examined the materials on record and the impugned Order. The point falling our consideration is whether in the light of the well settled principles for grant of temporary injunction whether plaintiff has made out a prima facie case of his rights of Telugu Version of the suit film and balance of convenience lies in his favour and whether the learned Single Judge was not justified in granting prohibitory injunction. Yet another question also falls for our consideration. "By postponing the release of the Telugu Version of the suit film, would not the suit film would loose its marketing potential, causing loss to the parties ?".

24.Before dealing with the question, we may first consider the principles governing grant of injunction. At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail. What the Court has to examine is :-

(i)The plaintiff has a prima facie case to go for trial;

(ii)Protection is necessary from the species of injuries known as irreparable before his legal right can be established; and

(iii)That the mischief of inconvenience likely to arise from withholding injunction will be greater than what is likely to arise from granting it.

25.The principle of law relating to temporary injunction during pendency of the suit is well recognized in the decision of the Supreme Court in Dalpat Kumar v.Prahlad Singh [AIR 1993 SC 276]. The relevant portions of the observations of the Supreme Court in the said case are as under :-

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".. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that :

(1)there is a serious disputed question to be tried in the suit and that a act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/Defendant.

(2)the Court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and

(3)that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it".

26.The Supreme Court further observed :-

".. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequence of apprehended injury or dispossession of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely on that cannot be adequately compensated by way of damages. The third condition also is that 'the balance of convenience' must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibility or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the

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relief of ad interim injunction pending the suit".

In subsequent paragraph, the Supreme Court further observed:-

> " .. The phrases 'prima facie case', "balance of convenience" and 'irreparable loss' are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice ..."

27.The grant of temporary injunction is purely a discretionary exercise of power by the Court. The power has to be exercised by the Court fairly and equitably. Whenever an appeal is filed against an order granting or refusing to grant an order of injunction, the Appellate Court is required to see only as to whether the trial Court has exercised the discretion judiciously and has taken into consideration facts which are relevant for an order of temporary injunction. The mere fact that an Appellate Court would come to a different conclusion is not a ground for interfering with the order passed by the trial Court, granting or refusing to grant an order of temporary injunction. Of course, in exceptional cases where it is shown that it is going to cause irreparable loss or failure of justice, it is open to the Appellate Court to consider the question of issuing Temporary Injunction on being satisfied that the findings are unreasonable and interest of justice calls for interference.

28.Bearing in mind the settled position of law, we may now proceed to consider whether the impugned Order calls for any interference. This Court has to examine the order of the learned trial Court to find out whether there is any perversity or omission to appreciate all materials on the record in exercising the discretion in granting injunction in favour of the plaintiff.

29.In all the applications, the contesting parties have staked claims to Telugu Version of the suit film and are claiming right to the Telugu Version. There is no denying that on 05.05.2005, the first Defendant has entered into an Agreement with the second Defendant assigning Telugu Version rights of the suit film. As consideration for the grant, the second Defendant has agreed to pay a consolidated royalty of Rs.2,00,00,000/-, out of which, the second Defendant has paid Rs.20,00,000/- as advance at the time of signing of the Agreement. On 24.10.2005, the first Defendant had transferred the production and marketing rights of the suit film for a mutually agreed sum of Rs.14,00,00,000/-. Even in the said Agreement dated 24.10.2005, the first Defendant had taken up the responsibility of marketing the Telugu rights onbehalf of the plaintiff for a sum of Rs.2,25,00,000/-.

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30.By the Cancellation Agreement dated 24.11.2005, Agreement in favour of the second Defendant was cancelled. Consideration of the Cancellation Agreement of the grant of Telugu Version rights was sum of Rs.29,00,000/-, paid by way of Banker's cheque dated 24.11.2005 and Rs.5,00,000/- towards the interest and profit for the cancellation of the Agreement. Under Clause 5 of the said Cancellation Agreement, the second Defendant has agreed to bring the party to cancel the said Agreement entered by the second Defendant with the said third party. Thereafter, D-1 had assigned Telugu Version rights to the plaintiff for a consideration of Rs.2,30,00,000/- by agreement dated 17.12.2005. Clause 2 of the Agreement indicates payment of advance sum of Rs.29,00,000/-, which was paid by way of Banker's cheque in favour of D-2 – SVCE. Under the said Agreement, it was further agreed that the plaintiff shall have the ownership of Video, Audio, Satellite and Television rights, DVD, VCD, LD. The period of expiry of the Telugu Version was agreed for a period of thirty years.

31.Pursuant to the said Agreement, the first Defendant had written letter [dated 17.12.2005] to the 6th Defendant lab, informing the lab about the transfer of the entire Telugu Version in favour of the plaintiff and also informing about the Cancellation Agreement dated 24.11.2005. That apart, as per the terms of the said agreement, plaintiff has also paid a further sum of Rs.60,00,000/- to the 1st defendant by way of Cheque No.057534 drawn on the HSBC dated 17.12.2005 in favour of D-1. The balance amount of Rs.1,41,00,000/- is to be paid by the plaintiff directly to Goutham Menon, Director of the film. Referring to the Telugu rights of the suit film and seeking intervention of South Indian Film Chamber of Commerce [SIFCC], plaintiff had sent a letter dated 02.06.2006 to SIFCC, which forwarded it to Andhra Pradesh Film Chamber of Commerce [APFCC]. In the meanwhile, D-2 filed a complaint before the APFCC. Enquiring into the strength of the complaint of D-2, Conciliation Sub-Committee of APFCC has passed its award dated 31.03.2006, requesting D-1 – Producer to refund Rs.34,00,000/- to D-2 - SVCE. Aggrieved with the award passed by APFCC, D-2 - SVCE has preferred appeal to the Tribunal Committee of APFCC. By that time, since the matter has become sub-judice, hence the appeal before the Tribunal did not proceed further and the matter is said to be pending.

32.The facts and circumstances and the materials on record would clearly show that the plaintiff has established a prima facie case. The learned Single Judge has rightly held that the plaintiff has proved his prima facie case and his right has to be protected. We are of the considered view that the plaintiff having invested huge amount, it would be quite unjust and unequitable to deny temporary injunction. In the event of refusal of injunction, and if others exploit the film, the loss suffered by the plaintiff

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would not be ascertainable. On the other hand, if Temporary Injunction is granted in favour of plaintiff in respect of Telugu Version even if the other contesting parties ultimately succeed, loss suffered by the Defendants could easily be ascertained.

33.As noted earlier, the second Defendant has not contested the matter in the trial Court. Only in the appeal, D-2 has filed counter affidavit contending that plaintiff has requested him to directly pay the amount of Rs.1,00,00,000/- to one M/s.Sathiya Rengiah on or before the release of the suit film and Rs.80,00,000/- to Goutham Menon director of the movie towards the production expenses of the said movie and he was publishing the same under the title "Mahadeera" by incurring huge expenses. It is the further case of D-2 that as per the Cancellation Agreement, plaintiff ought to have paid an amount of Rs.29,00,000/- and further amount of Rs.5,00,000/- and D-2 ought to have organized a meeting on 25.11.2005 between the plaintiff and D-4 – S.S.Communications in respect of overseas [theatrical], Satellite, Video, Cable T.V. and all other electronic and Television Media Rights over the Telugu Version. According to D-2, though the meeting was organized, plaintiff was unable to get back rights over the Telugu Version of the suit film and the Cancellation Agreement was not given effect to and the Cancellation Agreement itself must be deemed to have been cancelled.

34.Plaintiff’s case is assailed contending that plaintiff has not produced any lab letter. No doubt, plaintiff has not produced any lab letter. But the fact remains that the plaintiff has requested the lab, by letter dated 17.12.2005, to issue a lab letter, enclosing the letter of the Producer. Plaintiff’s documents – Agreements and other documents cannot be brushed aside on the ground of absence of Lab Letter.

35.Mr.PL.Narayanan, learned counsel for D-5 has submitted that D-4 and D-5 have made out a prima facie case for grant of injunction in their favour and if temporary injunction is granted, D-5 would certainly ensure the release of the film. While considering the balance of convenience of parties and comparative inconvenience of both parties, we find that the equitable relief of temporary injunction could be granted only to the plaintiff. As noted earlier, at the most, D-5, prima facie has a lien over the prints of Telugu Version. The contention that D-4 and D-5 have made out a prima facie case for grant of injunction is unacceptable.

36.Refuting the averments, onbehalf of the plaintiff, it was contended that as contemplated under the Cancellation Agreement, the plaintiff had taken Demand Draft for Rs.29,00,000/- on 24.11.2005 and the Cancellation Agreement was very well acted upon, as is evidenced by the proceedings before the SIFCC and

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APFCC. It is stated that it is the responsibility of the SVCE to cancel the said Agreement entered into by D-2 with third party. Clause 5 categorically states that cancellation is to be carried out positively on 25.11.2005 and it is the responsibility of SVCE to bring the party concerned for cancellation of Satellite right of the Telugu Version. We fully endorse the views of the learned Single Judge that contention of D-2 that cancellation was not acted upon, could be gone into only at the time of trial when parties adduce evidence. Materials on record show that the plaintiff had acted in furtherance of the Agreement between him and the plaintiff dated 17.12.2005, assigning Telugu rights. We are satisfied that the plaintiff's claim is founded on good grounds and there is serious question to be tried in the suit. As the plaintiff has proved prima facie case and balance of convenience is also in his favour, we find that the learned Single Judge had rightly passed the order of temporary injunction. We endorse the views taken by the learned Single Judge that the plaintiff's copyright of the Telugu Version as per the Agreement dated 17.12.2005 is to be protected. Consequently, the appeals O.S.A.Nos.135 and 133/2007 are dismissed.

37. O.S.A.No.344/2006 :

As against the grant of exparte order of interim injunction in O.A.No.186/2006, D-4 has filed A.No.3149/2006 for vacating the interim injunction, which was allowed on 23.06.2006. Aggrieved by the same, plaintiff has filed this appeal. Since we are confirming the order of grant of temporary injunction in favour of the plaintiff, order in A.No.3149/2006 has to be reversed and this appeal is allowed.

38.Contentions of D-4 – S.S.Communications – O.S.A.Nos.131/ 2007 and 136/2007 :-

S.S.Communications claims that D-2 - SVCE has entered into an Agreement with it on 09.05.2005 for assigning Satellite video, cable, Doordharshan, Pay T.V., D.T.H., Internet, VCD, DVD, Rights of the Telugu Version of the film. D-4 – S.S.C. also claims to have entered into an Agreement dated 23.12.2005 with D-2 and obtained assignment of overseas rights for a consideration of Rs.1,35,000/-. Though Satellite right is said to have been assigned, no consideration is indicated in the said Agreement. The learned Single Judge doubted the correctness of the Agreement dated 09.05.2005 finding that there is no recital in the body of the Agreement about consideration, for assigning the Satellite right, D-4 – S.S.C. agreed to make a total payment of Rs.22,50,000/-. We feel that the learned Single Judge was not factually correct in saying that the body of the Agreement does not contain any clause relating to consideration. Clause (5) of the agreement refers to the consideration of Rs.22,50,000/- out of which an amount of Rs.12,50,000/- to be paid as advance and the balance amount of Rs.10,00,000/- to be paid to the Laboratory at

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the time of release of the film. The learned Senior Counsel Mr.AR.L.Sundaresan has submitted that D-4 has paid a sum of Rs.12,57,000/- for the film "Mahadheera" and has also spent huge amount towards advertisement and promotion of the film. No document had been produced evidencing such payment of Rs.12,57,000/-. Like wise, contention that D-4 has already spent huge amount on advertising and on promotion of Telugu Version of the film is unsupported by any material. However, we do not deem it necessary to express any views at this stage and the same could be gone into at the time of trial when parties adduce evidence.

39.As rightly observed by the learned Single Judge, D-4 S.S.C claims through D-2 – SVCE. When the original Agreement in favour of D-2 dated 05.05.2005 had been cancelled by the Cancellation Agreement, D-4 could claim no better right. However, if D-4 establishes payment of consideration, right of D-4 has to be protected. As noted earlier, as per clause 5 of the Cancellation Agreement, it was the responsibility of SVCE to bring the party concerned [S.S.C.] to Chennai on 25.11.2005 for the said cancellation of the satellite right of the Telugu Version. According to D-2, in the meeting on 25.11.2005, the Producer was unable to get back the satellite right of the Telugu Version. The recitals in Clause 5 of the Cancellation Agreement indicates that it is the responsibility of D-2 – SVCE to cancel the Satellite Agreement. As per Cl.8 of the Agreement dated 09.05.2005, the assignees [D-4 SSC] can telecast the film by any means like satellite rights only after six months from the first release of the film in theatres. Until then, the assignees are permitted to use the songs and clippings of the film without any restriction. Having regard to the respective claims of the parties, we deem it fit to direct the parties to maintain status quo till the disposal of the suit in respect of Satellite, video, cable, Doordarshan, Pay TV, DTH, Internet, VCD, DVD and overseas rights of the Telugu Version of the film. Accordingly, order of the learned Single Judge in OA Nos.707/2006 and 708/2006 are modified and OSA Nos.131 and 136/2007 are partly allowed.

40.D-4 – S.S.C. mainly relies upon the lab letter dated 07.01.2006 to show that D-2 – SVCE had intimated the laboratory of the assignment of the World Satellite Rights in favour of S.S.C. The learned Single Judge has doubted the validity of the letter for two reasons – (i)Lab is said to have issued letter dated 07.01.2006 in response to the letter of request by the Original Assignee on 09.11.2005, after a gap of two months and there is unexplained delay; (ii)the lab letter refers to SVCE as the Producer of the film despite the fact that SVCE is only the original assignee and not the Producer. The learned Senior Counsel Mr.AR.L.Sundaresan has submitted that D-4 has parted with money and that he has spent huge amount on advertising and on promotion of the Telugu Version and D-4 has got a prima facie right and the learned Single Judge ought to have granted injunction restraining the plaintiff from alienating the Satellite and overseas right.

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Whether D-4 is an assignee for consideration and whether his right remains unaffected even after Cancellation Agreement could be gone into only at the time of trial.

41.The fourth Defendant has prayed for Temporary Injunction restraining the 7th channel from alienating the Satellite, Video, Cable, Doordarshan, Pay TV etc. and overseas right. It is common knowledge that in Cinema Trade, release of any picture through Satellite, Doordarshan etc. and overseas would be of considerable importance both to secure success of the film and also to earn profit.

42.Having regard to the views taken by us in appointing the plaintiff as Party Receiver, any right of D-4 could be safeguarded by issuing appropriate directions which we would shortly refer to.

43. Right claimed by D-5 :-

D-5 – V.R.S.Prasad, Appellant in O.S.A.No.132/2007 claims to have originally entered into an Agreement dated 28.04.2004 with D-1 for lease-hold right of the Tamil Feature Film Production No.--- on outright basis for entire areas of North Arcot, South Arcot and Chengalpat, popularly known in the film industry as "N.S.C. Area". Consideration of Rs.60,00,000/- is stated in Clause (2) of the Agreement. Within a month of the aforesaid Agreement, another Agreement dated 18.05.2004 is said to have been entered into between D-1 and D-5 for dubbing and re-making of Tamil feature film titled "SIPPAI" starring Kamalahassan and others, directed by Goutham Menon and music scored by Harris Jeyaraj. Clause (2) of this Agreement mentions a consideration of Rs.20,00,000/-. Though in the Agreement clause, consideration is said to have been paid, materials on record clearly show that those Agreements might have been entered into for settling the outstanding dues to be paid by the Producer [D-1] to D-5 Prasad and Associate Firms against the picture "JANA", starring Ajith, Sneha and others.

44.The Agreement dated 28.04.2004 does not contain the title of the Tamil Feature Film but only mentions "Production No..... Color Scope" featuring Kamlahassan and others direction by Goutam Menon. The other Agreement dated 18.05.2004 is in respect of assignment of Telugu Dubbing and re-making Agreement of Tamil feature Film "SIPPAI". That the Agreements were executed for the outstanding dues payable by D-1 towards earlier production titled "JANA" and the adjustment of the amount payable is made clear in the counter affidavit filed by D-5. In the counter affidavit, D-5 has also indicated that D-1 had issued demand Promissory Notes and cheques in his favour for the outstanding dues and payable and that D-5 insisted for assignment of Telugu Dubbing Version of "SIPPAI" and Danush starer "DEVADAIYAI KANDENE", an on going production. According to D-5, Production No.18 came to be named as “SIPPAI” for a very short while and subsequently as “Vettayadu

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Vilayadu" and all the correspondence would only confirm that D-5 has rights over the Telugu Version of suit film. At this stage, it is not possible to express any views on the merits of the contentions put-forth by D-5. Suffice it to note that there is no corresponding Lab letter pursuant to the Agreements dated 28.04.2004 and 18.05.2004. It cannot be said that D-5 has established a prima facie case.

45.On 06.05.2005, the first Defendant is said to have sent a communication to M/s.Sathiya Rengiah [father of D-5] stating that he had asked Raj Varma - D-2 to pay Rs.100,00,000/- directly to M/s.Sathiya Rengiah, and that amount will be paid to him before the release of the suit film. Case of D-5 is that assignment in favour of SVCE was only conditional and that the assignment shall have effect in favour of the second Defendant only upon the latter paying a sum of Rs.1,00,00,000/-, as the letter of confirmation dated 06.05.2005 was jointly executed and addressed to D-5's father's name. Mr.P.L.Narayanan, learned counsel for D-5 has forcibly contended that D-2 has entered into a Contingent Agreement on 05.05.2005 subject to payment of Rs.One crore to D-5, which cancelled the earlier Agreement in favour of D-5 dated 18.05.2004. When that being so, it was contended that D-5 is not bound by the Cancellation Agreement between plaintiff and D-2, since he is not a party to it and in any event, plaintiff cannot by-pass pre-existing commitment of D-1 to D-5, since the plaintiff has only stepped into the shoes of D-1. Therefore, it is the contention of D-5 that cancellation of the Agreement between D-1 and D-2 in respect of Telugu Version and subsequent Agreement between the first Defendant and the plaintiff on 17.12.2005 would not in any way affect D-5's copyright of the Telugu Version of the said film and that the lab letter in his favour is still operative and therefore, the lab cannot release the prints to the plaintiff.

46.Though the letter was said to have been sent on 06.05.2005 to D-5's father about payment of Rs.One crore, there was no corresponding lab letter at that time. Only on 06.10.2005, SVCE is said to have sent a letter to the lab informing about the financial arrangement with D-5. On 06.11.2005, SVCE has sent a letter to D-5 confirming its commitment for payment of Rs.1,00,00,000/- and subsistence of lien in favour of D-5 for the said amount of Rs.One Crore. In response to the letter dated 06.10.2005, lab has issued a letter dated 17.11.2005, confirming the right of lien of D-5 and one S.Sathya Ramamurthy. Submitting that D-6 Laboratory is one of the internationally celebrated Laboratory, enjoying highest reputation in the country, learned counsel Mr.P.L.Narayanan has contended that it is not the case of the plaintiff that the laboratory has acted fraudulently in issuing the lab letter. There is no denying that lab latter in favour of D-5 is of great value, substantiating D-5's case i.e.

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said lab leter has been issued in response to SVCE's letter describing itself as Producer. But the fact remains that D-2 - SVCE is only a original assignee. That apart, the time gap between letter dated 06.10.2005 and lab letter dated 17.11.2005 remains unexplained.

47.The learned Single Judge has examined the lab letter dated 17.11.2005 vis-a-vis the lab letter produced by D-4 - S.C.C. [dated 17.01.2006]. S.S.C. claims Overseas rights as per lab letter dated 07.01.2006 given by D-2. D-5 claims right of negatives of Telugu Version, including overseas rights. While two of the contesting Defendants claim right over satellite rights and overseas rights, the validity of the rival claims could be tested only at the time of trial when the parties adduce evidence.

48.Placing reliance upon AIR 1967 Orissa 89 [Sudhakar Sahu Vs. Achutananda Patel and others], learned counsel Mr.PL.Narayanan has submitted that when execution of document is either admitted or proved, onus is upon the executant to prove that consideration did not pass and a stranger to transaction cannot question non-passing of consideration. It was further contended that Executant viz., D-1 nor D-2 has challenged the Contingent Contract with D-5 and payment to D-5 and while so, plaintiff, a subsequent entrant to the field, cannot deny claim of D-5. This argument could only be advanced at the trial stage when the parties adduce evidence and hence we do not propose to express any views on this contention. Suffice it to note that plaintiff having parted with a huge amount, cannot be said to be a stranger or a rank trespasser.

49.As rightly observed by the learned Single Judge, payment of consideration of Rs.60,00,000/- and Rs.20,00,000/- is also contradictory. At one hand, the said consideration is said to have been paid. On the other hand, materials on record indicate adjustment towards the outstanding payable towards "JANA". Under those circumstances, D-5 cannot be said to have established any prima facie case.

50.In any event, at this stage, D-5 can only be said to be having lien over the Telugu Version. In O.A.No.721/2006, D-5 has prayed for interim injunction restraining D-1 and the plaintiff from interfering with his Dubbing and re-making rights of the Telugu Version. It is not enough that D-5 has some right of lien over the suit film. He should also establish prima facie case and prove irreparable injury and balance of convenience. Hence refusal by the learned trial Court to issue temporary injunction in favour of D-5 cannot be interfered with and accordingly, O.S.A.No.132/2007 is liable to be dismissed.

51. Claim of Gita Chitra International O.S.A.No.125/2007 and OSA 127/2007:-

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Suit C.S.No.741/2006 filed by GCI is for recovery of a sum of Rs.20,10,000/- being the amount of Rs.15,00,000/- said to have been advanced by him to D-2 – SVCE. GCI has prayed for Interim Injunction restraining the respondents from dealing with the copyrights of Telugu Dubbing Version. since claim of GCI is based upon payment of Rs.15,00,000/- allegedly made by him to SVCE, GCI cannot seek to restrain the plaintiff from dealing with the copyrights.

52.Insofar as Garnishee order sought by GCI in A.No.4060 of 2006, the learned Single Judge has directed the 6th respondent Garnishee to keep the amount of Rs.29,00,000/- deposited with them by the plaintiff herein in a fixed deposit in any one of the nationalized bank. Whether GCI has actually advanced a sum of Rs.15,00,000/- to SVCE and whether GCI can maintain its claim against the plaintiff is a matter to be determined at the time of trial when parties adduce evidence. We find that the order directing deposit of Rs.29,00,000/- in a Nationalized Bank is fair and reasonable and cannot be interfered with. Accordingly, O.S.A.No.125/2006 is liable to be dismissed. OSA No.127/2007 preferred by the plaintiff (against the order in A.No.4060/2006) is dismissed.

53. Temporary Mandatory Injunction :-

Plaintiff has prayed for interim mandatory injunction, directing the lab to deliver the prints of Telugu Version of the suit film. The learned Single Judge declined to grant interim mandatory injunction mainly on the grounds :-

(i)there are other claimants who have advanced monies to the producer;

(ii)granting of interim mandatory injunction would amount to decreeing of the suit itself.

54.Principle governing grant of temporary mandatory injunction is settled. In Borab Cawasji Warden Vs.Coomi Sarob Warden [AIR 1990 SC 867], wherein the Supreme Court in paragraph 14 of the Judgment has laid down three guidelines:-

(i)the plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction;

(ii)it is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money;

(iii)the balance of convenience is in favour of the one seeking such relief.

55.The purpose of temporary mandatory injunction is to maintain status quo on the date of suit. To maintain status quo on the date of suit, Court is competent to pass temporary injunction even in a mandatory form. The words "The Court may by order grant

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a temporary injunction or make such other order for the purpose of preventing, damaging or otherwise causing injury or loss as the Court thinks fit until the disposal of the suit or until further orders" in Order XXXIX, Rule 1 of the Civil Procedure Code are wide enough to include in its fold, an order in the mandatory form for exercising in very rare cases and with due care and caution unless there are exceptional circumstances. Normally no temporary injunction in the mandatory form should be granted, and it cannot be claimed as a matter of right or can it be issued as a matter of course. Even in rare cases, where temporary mandatory injunction is granted, it is granted only to maintain status quo and is not granted to establish a new state of things differing from the state of things that existed on the date of filing of suit. What is to be seen is whether the plaintiff's case is one such rare and exceptional case to grant temporary mandatory injunction. As observed by the learned Single Judge, there are other persons who claim to have advanced monies to the Producer and got copyrights and granting of temporary mandatory injunction would seriously affect the rights of the other claimants. Having regard to the materials on record, we find no exceptional circumstances to grant temporary mandatory injunction as prayed for by the plaintiff. If the trial Court refuses to grant a temporary mandatory injunction, the Appellate Court would not generally interfere in the exercise of discretion. In our view, though plaintiff has proved prima facie existence of his right to the suit film, since there are other claimants and stake holders, any grant of temporary mandatory injunction directing release of prints of the Telugu Version to the plaintiff would affect the interest of other claimants. We confirm the view taken by the learned Single Judge declining to grant temporary mandatory injunction.

56.However, having regard to the view taken by us in appointing plaintiff as the party Receiver in that context, we direct the releasing of prints of Telugu Version of suit film to the plaintiff with appropriate directions indicated infra. O.S.A.No.80/2007 is disposed of with directions.

57. Appointment of plaintiff as receiver :-

The matter is pending trial and finality could be reached only after quite some time. At this juncture, it would not be appropriate to go into the merits of the case, which is pending trial. The negative/prints of Telugu Version is in the laboratory. If the Dubbing/re-making of film and the prints thereon is locked up in lab, it would be no way advantageous to either party. In the Cinema field when multitude of films are being released, the suit film and its Telugu Version "Mahadeera" might loose its potential both in the marketing and collection. Dismissal of the application for Temporary Mandatory Injunction would mean loss to all the parties and would be disadvantageous to various stake holders. We feel that the time to be taken for completion of trial would

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defeat the very object. Having regard to the interest of all parties and facts and circumstances of the case, we feel that this is the fit case to appoint Receiver, pending trial. The learned Counsel for D-5 has also expressed his willingness that D-5 could be appointed as Receiver for releasing Telugu Version. However having regard to the facts and circumstances of the case, we deem it fit to appoint plaintiff as party receiver.

58.Law relating to Receiver is found in Or.XL, Sections 51 (d), 94(d) CPC. The mode and effect of Receiver's appointment and his rights, powers, duties and liabilities are regulated by the Code of Civil Procedure. There is nothing in Or.XL R.1 CPC which limits the power of the Court to appoint a Receiver only to cases in which an application is made to it by a party to the suit. In appropriate case, the Court may appoint a Receiver under Or.XL R.1 CPC even though the plaintiff has not asked for such relief or has applied only for injunction.

59.The Court can appoint a Receiver even without an application by the party. But the power is to be exercised sparingly and only in exceptional cases. We have already subscribed to the view taken by the learned Single Judge that plaintiff has proved his prima facie case. Under such circumstances, we are of the view that the Appellate Court can appoint the plaintiff as Receiver for the suit film.

60.The question may arise whether in a suit for declaration and injunction, receiver could be appointed. Grant of injunction governed by the provisions of Specific Relief Act and equitable consideration should invariably be the guiding factor while recording the findings on the question of prima facie case, irreparable loss and balance of convenience. In 1955(1) MLJ 287 [D.K.Raja Vs.K.Raja], the Court has held that in an application for injunction, Court may appoint a receiver if there is alternative prayer for receiver appointment. As noticed earlier, in appropriate cases, the Court may appoint the receiver even suo motu. In such view of the matter, the plaintiff is appointed as party receiver for the Telugu Version of the suit picture.

61. Security and duties of plaintiff/party receiver :-

Or.XL R.3 CPC contemplates furnishing of security. But Or.XL R.3 is not mandatory in respect of the requirement as to the Receiver furnishing security. However the Court would dispense with security only in exceptional cases. The case in hand is not such an exceptional case so as to dispense with security. Receiver is appointed for the purpose of dubbing/re-making of Telugu Version of suit film and for releasing the Telugu Version and management. Releasing involves proper management, collection and keeping accounts for all dealings. Therefore, in that view of the matter, we direct the plaintiff to furnish security for Rs.50,00,000/- by way of immovable property either in his name or

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in the name of surety. Furnishing of security by the plaintiff shall be to the satisfaction of the learned trial Court.

62.As Receiver the plaintiff shall take release of the negative/prints of the Tamil film "Vettayadu Villayadu" for dubbing/remaking of Telugu Version. The plaintiff can exercise the powers of the owner in the matters of execution of any documents in respect of the Telugu Version. He is also at liberty to incur any expenses for releasing of the film. The plaintiff is directed to maintain proper accounts showing the expenses and income. Such accounts is to be filed before the Court after giving notice and copy of the account to the other side once in every four months.

63.Such accounts shall be subject to the verification by the opposite party and to the satisfaction of the Court. It is further directed that the accounts of the Telugu Version of the suit film shall be kept separate and not to be mixed with the income from the Tamil Version of the suit film. We further direct that the plaintiff, as Party Receiver, can deduct 60% of gross income to be adjusted towards the expenses and remuneration payable, if any, to be finalized by the learned trial Court at the conclusion of the trial. The balance amount is to be credited to the account of C.S.No.168/2006. Such deposit shall be subject to the result of the suit.

64.If any income is not properly accounted and any contentious question is to be determined relating to accounts, the same could be raised and determined only at the time of trial.

65. O.S.A.No.80/2007 :-

Appellant plaintiff M/s.7th Channel Communications is appointed as party receiver for the Telugu Version of the suit picture. The sixth Defendant/ Laboratory is directed to deliver prints of the Telugu Version of the Tamil colour Film "Vettayadu Vilayadu" to the plaintiff. Appointment of plaintiff is subject to his rights and duties as stated in paragraph Nos.61, 62, 63 and 64. O.S.A.No.80/2007 is ordered accordingly.

66.The plaintiff is directed to furnish immovable property for Rs.50,00,000/- as security within a period of four weeks from the date of receipt of a copy of this order.

67.As party receiver, plaintiff can take 60% of gross income as stated in paragraph No.63 of the Judgment and the balance amount is to be credited to the account of C.S.No.168/2006. That deposit is subject to the result of the suit.

68.The amount to be credited to the account of C.S.No.168/2006 is to be invested in a nationalized bank till the completion of the trial so that the deposited amount may fetch

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interest to the advantage of the successful party.

69.O.S.A.Nos.125, 127, 132, 133 and 135/2007 are dismissed. For the reasons stated in paragraph no.37, O.S.A.No.344/ 2006 is allowed.

70.O.S.A.Nos.131/2007 and 136/2007 are partly allowed. All parties are directed to maintain status quo in respect of Satellite, Audio, Video, Pay TV, DVD, VCD etc. overseas rights till the disposal of the suit.

71.We make it clear that the observations made in this order are not to be construed as expression of our opinion on the merits of the contentions of the parties, which shall be determined by the learned trial Court on merits, without being influenced by any of the views expressed in this order.

72.Having regard to the stakes of the parties involved, we would also request the learned Single Judge to expedite the trial and dispose the same preferably within one year from the date of receipt of copy of this order.

Tar

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar.

To

1.The Sub Assistant Registrar,
Original Side, High Court, Madras.

2.Mr. Manicam Narayanan
Proprietor, Party Reciver
M/s.7th Channel Communications,
121, Dr.Radhakrishnan Salai, Mylapore, Chennai - 4.

- 4 ccs to M/s. Sai, Bharath & Ilan, Advocates SR No.42600, 42599, 42590 & 45589
- 1 cc to Mr. P. L. Narayanan, Advocate SR No. 43251

NG(CO)
SR/19.7.2007

O.S.A. Nos.80, 125, 127, 131, 132, 133, 135, 136/2007 AND O.S.A.No.344/2006

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